

***IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES***

Applicant: KOKKINEN et al.

Title: A VEHICULAR SERVER WITH
WIRELESS INTERFACES FOR
PROVIDING CONNECTION
TO LOCAL AND REMOTE
CONTENT

Appl. No.: 09/988,995

Filing Date: 11/21/2001

Examiner: Hamza, Faruk

Art Unit: 2155

Confirmation 9518
Number:

SUBSTITUTE BRIEF ON APPEAL

Mail Stop Appeal Brief - Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

REAL PARTY IN INTEREST

The real party in interest in this Appeal is Nokia Corporation of Espoo, Finland. This interest is evidenced by an assignment from the inventor to Nokia Corporation, which is recorded at Reel 012920, Frame 0720.

RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences that will directly affect, be directly affected by, or have a bearing on the present appeal, that are known to Appellant or Appellant's patent representative.

STATUS OF CLAIMS

Claims 15-24 and 27-34 were pending in the application when a final Office Action dated May 23, 2007 was issued. In the May 23, 2007 Office Action, claims 1 and 27 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Claims 15-21, 27, and 29 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,477,152 (Hiett) and U.S. Patent No. 6,732,186 (Hebert). Claims 23 and 24 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,477,152 (Hiett) and U.S. Patent No. 6,801,934 (Eranko). Claims 22 and 28-34 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,477,152 (Hiett) in view of the Examiner taking Official Notice. The above rejections and objections were maintained in a Notice of Panel Decision from a Pre-Appeal Brief Review dated November 15, 2007. The Examiner's rejection of claims 15-24 and 27-34 is being appealed.

Claims 15-21, 27, and 29 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,477,152 (Hiett) and U.S. Patent No. 6,732,186 (Hebert).

Claims 23 and 24 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,477,152 (Hiett) and U.S. Patent No. 6,801,934 (Eranko).

Claims 22 and 28-34 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,477,152 (Hiett) in view of the Examiner taking Official Notice.

The claims in their current condition are attached hereto in the Appendix.

STATUS OF AMENDMENTS

Claims 15, 17, and 27 were amended in the present application and entered by the Examiner subsequent to the receipt of the final Office Action dated May 23, 2007 to address the rejection of claims 1¹ and 27 under 35 U.S.C. § 112, second paragraph, and in order to place the present application in proper condition for appeal.

SUMMARY OF CLAIMED SUBJECT MATTER

Various embodiments relate to a system and method of providing a user with different types of communication services while, e.g., traveling in a vehicle and being exposed to/requesting access to both local and remote content located in different communication networks. (*See, e.g.*, Abstract, Figure 1, page 1, line 29-page 2, line 9, and page 6, line 31-page 8, line 28). A server 50 can be utilized in, e.g., a train, where the server 50 can be provided with three wireless interfaces. (*See, e.g.*, Figure 1 and page 5, lines 7-17).

In accordance with a first embodiment, a server 50 having a first wireless interface 55 is provided which can effectuate a connection on a customer basis, enabling access to local content on the server 50. (*See, e.g.*, Figure 1, page 2, lines 19-26, and page 5, lines 15-19). Customer basis refers to, e.g., a context where communication between the server 50 and user terminals share at least one of authentication, encryption, and customer billing capability associated with a customer transaction. (*See, e.g.*, page 2, lines 11-22, page 6, line 13-page 7, line 14, and page 9, line 31-4). A second wireless interface 60 of the server 50 can provide a connection to an external (e.g., beyond the connection effectuated by the first wireless interface) mobile network 62 for accessing remote content on a remote/service controller server 80/90. (*See, e.g.*, Figures 1 and 2, page 2, lines 28-29, page 5, lines 19-21,

¹ The Examiner identified antecedent basis issues in claim 1. However, claim 1 was cancelled by Appellant in a previously filed Amendment and Reply. Therefore, Appellant operated under the assumption that the Examiner intended to refer to claim 15, the only other independent claim still pending in the present application.

and page 7, line 28-page 8, line 3). Moreover, a third wireless interface 65 of the server 50 can provide, e.g., a broadband connection to yet another external network 67 to enable access remote content on remote servers 80/90. (*See, e.g.*, Figures 1 and 2, page 2, line 29-page 3, line 9, page 5, lines 21-24, and page 8, lines 5-12).

Also in accordance with the above embodiment, if the server 50 first attempts to connect to a remote server 80/90 via the third wireless interface 65 and is successful in establishing a connection with the remote server 80/90, a user can access remote content thereon. (*See, e.g.*, page 8, lines 5-18). However, if the server 50 is unable to establish a connection with the remote server 80/90 via the third wireless interface 65, the server can attempt to, e.g., connect to the remote server 80/90 via the second wireless interface 60 to still allow the user to access remote content, albeit over the external mobile network 62. (*See, e.g.*, page 7, line 16-page 8, line 3).

It should be noted that in accordance with the first embodiment described above, the first wireless interface 55 can comprise a Bluetooth interface which provides, e.g., a broadband connection to user's cellular phones. (*See, e.g.*, page 5, lines 18-19 and page 7, lines 1-13). Additionally, the second wireless interface 60 can comprise a wideband code division multiple access (WCDMA) interface for providing connections to an external mobile WCDMA network 62. (*See, e.g.*, Figure 1 and page 5, lines 19-21). Moreover, the third wireless interface 65 can comprise a Hiperlan Wireless local area network (LAN) interface for providing a broadband connection to an external network 67, such as a hot-spot area at a train station, where, e.g., hot-spot access points exist. (*See, e.g.*, page 5, lines 21-24 and page 7, lines 28-30).

In accordance with a second embodiment, a method of providing content using the server 50 installed on a vehicle, e.g., a carriage of a train 14, is disclosed. (*See, e.g.*, Figure 3, page 3, lines 18-20, page 5, lines 7-9, and page 9, lines 17-18). The server 50 can include a first wireless interface 55 for providing a connection to local customer terminals 16. (*See, e.g.*, page 2, lines 11-22, page 6, line 13-page 7, line 14, and page 9, line 31-page 10, line 4). The server 50 can also include a second wireless interface 60 and a third wireless interface 65, at least one of which can provide a connection to an external mobile network, such as network 62 and/or network 67. (*See, e.g.*, Figures 1 and 2, and page 5, lines 19-30).

The method of this second embodiment further comprises receiving a request via the first wireless interface 55 from a local customer terminal 16 to access a remote server 80/90, where the third wireless interface 65 can be utilized in an attempt to establish a connection with the remote server 80/90. (*See, e.g.*, page 6, line 31-page 7, line 26). If the carriage of the train 14 is in a hot-spot area, for example, the connection to the remote server 80/90 can be successful. (*See, e.g.*, page 8, lines 5-11). This can be advantageous to the local customer because a connection via the third wireless interface 65 can effectuate a speed of access to remote content on the remote server 80/90 more favorable than a connection via the second wireless interface 60. (*See, e.g.*, page 8, lines 12-15). However, if a connection via the third wireless interface 65 cannot be established, the server 50 can attempt to establish a connection with the remote server 80/90 via the second wireless interface 60 to still enable access to remote content on the remote server 80/90. (*See, e.g.*, page 7, line 28-page 8, line 3).

It should be noted that in accordance with the second embodiment described above, the first wireless interface 55 can comprise a Bluetooth interface which provides, e.g.,

a broadband connection to user's cellular phones. (*See, e.g.*, page 5, lines 18-19 and page 7, lines 1-13). Additionally, the second wireless interface 60 can comprise a wideband code division multiple access (WCDMA) interface for providing connections to an external mobile WCDMA network 62. (*See, e.g.*, Figure 1 and page 5, lines 19-21). Moreover, the third wireless interface 65 can comprise a broadband connection interface, such as a Hiperlan Wireless local area network (LAN) interface for providing such a broadband connection to an external network 67, e.g., a hot-spot area at a train station, where, e.g., hot-spot access points exist. (*See, e.g.*, page 5, lines 21-24 and page 7, lines 28-30).

Furthermore, it should be noted that the first interface 55 can comprise any number of communication interfaces, e.g., PDC, PHS, EDGE, GPRS, WCDMA, etc. (*See, e.g.*, page 9, lines 4-6). Likewise, the second wireless interface 60 can include interfaces for effectuating communications based on a Hiperlan Wireless LAN, IEEE 802.11 Wireless LAN, MMAC Wireless Lan, etc. (*See, e.g.*, page 9, lines 8-10). Further still, the third wireless interface 65 can be interfaces for IEEE 802.11, MMAC Wireless LAN, Bluetooth IEEE 802.16, IEEE 802.15, etc.) (*See, e.g.*, page 9, lines 12-15).

Additionally and in accordance with various embodiments, the local content on the server 50 can be updated, taking advantage of situations where, e.g., a broadband connection can be effectuated using the third wireless interface 65. (*See, e.g.*, page 4, lines 6-10). That is, when the carriage of the train 14 is in a hot-spot area, an update module 76 of the server 50 can download updates to the content provided locally in the server 50 (which can be accessed via the first wireless interface 55 as described above). (*See, e.g.*, page 8, lines 20-28). Such a feature allows a service provider of the server 50 to keep locally stored content on the server 50 up-to-date with minimum effort, e.g., avoiding any need to

physically visit the server 50 and manually update the local content stored thereon. (*See, e.g.*, page 10, lines 14-18).

Furthermore, various embodiments can effectuate various billing and/or access/restriction configurations for local customers wishing to access at least one of local content on the server 50 and remote content on remote servers 80/90. (*See, e.g.*, page 3, line 27-page 4, line 4 and page 10, lines 20-24). For example, only some of the local content stored on the server 50 may be free, where the remaining content stored thereon must be paid for. (*See, e.g.*, page 6, lines 20-24). An access control module 74 of the server 50 can control access/restrictions to the local content and/or remote content via, e.g., Internet access through an external network 65/67. (*See, e.g.*, page 6, lines 24-29). A billing module 70 of the server 50 can then handle billing for non-free content/services. (*See, e.g.*, page 7, lines 10-14).

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

The first ground of rejection to be reviewed on appeal is the Examiner's rejection of claims 15-21, 27, and 29 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,477,152 (Hiett) and U.S. Patent No. 6,732,186 (Hebert).

The second ground of rejection to be reviewed on appeal is the Examiner's rejection of claims 23 and 24 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,477,152 (Hiett) and U.S. Patent No. 6,801,934 (Eranko).

The third ground of rejection to be reviewed on appeal is the Examiner's rejection of claims 22 and 28-34 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,477,152 (Hiett) in view of the Examiner taking Official Notice.

ARGUMENT

In *In re Rijckaert*, 9 F.3d 1531, 1532, (Fed. Cir. 1993), the Federal Circuit outlined the burden on the PTO as follows with regard to rejections made under 35 U.S.C. § 103:

In rejecting claims under 35 U.S.C. 103, the examiner bears the initial burden of presenting a *prima facie* case of obviousness. *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992). Only if that burden is met, does the burden of coming forward with evidence or argument shift to the applicant. *Id.* “A *prima facie* case of obviousness is established when the teachings from the prior art itself would appear to have suggested the claimed subject matter to a person of ordinary skill in the art.” *In re Bell*, 991 F.2d 781, 782, 26 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1993) (quoting *In re Rinehart*, 531 F.2d 1048, 1051, 189 U.S.P.Q. 143, 147 (CCPA 1976)). If the examiner fails to establish a *prima facie* case, the rejection is improper and will be overturned. *In re Fine*, 837 F.2d 1071, 1074, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988).

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some reasonable suggestion or motivation to modify the prior art reference or to combine reference teachings. Second, there must be a reasonable expectation of success of achieving the desired goals. Third, the prior art references when combined must teach all of the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on the Applicant’s disclosure. *In re Vaeck*, 947 F.2d 488 (Fed. Cir. 1991).

I. The Hielt reference and the Hebert reference do not render as obvious, claims 15-21, 27, and 29² of the present application because the references do not disclose, teach or suggest a server having a first, second, and third wireless interface, where the first wireless

² It should be noted that although the Examiner has asserted that claim 29 has been rejected in light of Hielt and Hebert at page 3 of the May 23, 2007 Office Action, no substantive rejection of claim 29 can be found at pages 3-6 of the Office Action. Instead, the Examiner has provided a reasoned rejection of claim 29 at page 8 of the May 23, 2007 Office Action, indicating at page 7 of the same Office Action, that claims 22 and 28-34 have been rejected in light of Hielt and Office Notice.

interface provides a connection on a customer basis, for local user terminals to the server, to enable access to local content on the server, and where the second and/or third wireless interface provide access to remote content on remote servers.

The Examiner has not made an adequate showing that claims 15-21, 27, and 29 of the present application are rendered obvious by U.S. Patent No. 6,477,152 (Hiatt) and U.S. Patent No. 6,732,186 (Hebert). More particularly and regarding independent claims 15 and 27, the Examiner has failed to cite any reference or any combination of references that teach local content, let alone accessing the local content on a server, thus resulting in a failure to meet at least the third requirement for establishing a prima facie case of obviousness.

The Examiner asserted that Hiatt teaches all of the required limitations of independent claims 15 and 27 of the present application including “a server for use in a vehicle including a first wireless interface providing a connection on a customer basis, for local user terminals to the server, to enable access local content on the server.” (*See, e.g.*, page 3 of the final Office Action of May 23, 2007). At page 4 of the final Office Action, the Examiner asserted that “[c]laim 27 does not teach or define any new limitation other than above claim 15 and therefore are rejected for similar reasons.”

Appellant disagrees with the Examiner’s above position. Hiatt is directed to a system and method of retrieving information from a data source 104, where the a request for such information is made from, e.g., an airplane, and the data source 104 remotely located from the airplane. Hiatt further describes that an information request system 102 enables information to be requested from the remote data source 104. (*See, e.g.*, Abstract, Figures 1 and 3-5, and Column 2, lines 37-57 of Hiatt). The information request system 102 is located on the airplane or other vehicle, and the remote data source 104 (e.g., an internet service provider (ISP) or remotely accessible network server) can be communicatively connected to

the information request system 102 via a first communication medium 208. (*See, e.g.*, Column 2, line 59-Column 3, line 26 and Column 8, lines 1-19). Additionally, Hiatt teaches that, upon receipt of an information request from the information request system 102, the remote data source 104 transmits the requested information to a receiver 106 (also located on the airplane) and communicates with the remote data source via a second communication medium 210. (*See, e.g.*, Col. 2, line 59-Column 3, line 26 and Column 3, lines 4-61).

Hence, nowhere in Hiatt is it described that anything but remote information/data is requested and transmitted to a user. To wit, Hiatt describes that the entire purpose of providing remote access to, e.g., ISPs or remotely accessible network servers, is to address problems associated with aircraft passengers demanding access to remote information sources. For example, Column 1, lines 20-27 of Hiatt indicates that:

Problems associated with mobile data communications are particularly acute on commercial aircraft... Cellular systems, however, generally cannot be used on aircraft for a variety of technical and regulatory reasons. Similarly, wireless local area networks (LANs) are... generally unsuitable for aircraft, due in part to the limited range of such LANs. The current primary alternative for passengers on commercial aircraft is to connect to a server provider using the dedicated air-to-ground telephones available to passengers on some aircraft.

In contrast to Hiatt, independent claims 15 and 27 of the present application, not only provide access to remote content on remote servers, but also provide access to local content on a server via a first wireless interface. As described above, Hiatt is wholly concerned with the transmittal of remote information to users traveling in a vehicle, e.g., an airplane, and makes no mention or allusion to local content on a server. Hiatt describes at Column 4, line 4-Column 5, line 30 that the receiver 106 merely “relays” requested information to the appropriate user, not acting as a server. The only mention of information

being stored by the receiver 106 of Hiatt occurs at Column 4, lines 53-57, where it is mentioned that any information received from the remote data source 104 can be stored in a memory and later provided to users that request “identical data.” Therefore, even though information may be stored at the receiver 106, the information was still received from the remote data source 104, clearly indicating that the stored data is essentially remote data, not local data.

Further still, even if the act of storing remote information at the receiver 106 could be interpreted as a transformation from remote information to local information, Appellant submits that doing so would result in ignoring the distinction between local content and remote content as recited in claims 15 and 27 of the present application. That is, Appellant’s choice of claim language clearly seeks to distinguish that content which is locally originated at the server and remote content that originates from remote servers. This feature is described in greater detail at page 6, lines 20-24 of the present application, where it is described that a local content module 72 (of the server 50) provides an extensive body of local content including services and information for the passengers’ to access.

Moreover, claims 15 and 27 require that local content from the server is accessed/provided via a first wireless interface. However, as evident in the above description, only two communication mediums are described in Hiatt, both of which are utilized for the sole purpose of effectuating communications between the above-described information request system 102 and receiver 106 (located on the airplane) and the remotely located data source 104. Nothing in Hiatt suggests any communication medium or wireless interface for accessing local content on the receiver 106. In fact, Appellant submits that Hiatt explicitly teaches against any sort of wireless interface that would allow a connection

between local terminals and the receiver 106. This is because, as described above, Hiett is concerned with providing content while a user is in an airplane, and recognizes that “cellular systems, however, generally cannot be used on aircraft for a variety of technical and regulatory reasons.” (*See, e.g.*, Column 1, lines 26-37). Moreover, Hiett describes that user interfaces (methods used to get remote content from the remote data source 104 to users) comprises, e.g., devices integrated into an armrest or tray table and/or tracking device of a portable computer connected to the aircraft LAN. (*See, e.g.*, Column 5, lines 49-59). Any of these connections are known and admitted by Hiett, to be inherently wireline/physical connections as wireless communications simply are not allowed in aircraft because of the potential for interference with aircraft instrumentation. Therefore, Appellant submits that Hiett has been mischaracterized by the Examiner, and contrary to the Examiner’s assertions, fails to teach at least a server providing access to local content via a first wireless interface. Hence Appellant submits that claims 15-21, and 27 of the present application are patentable over this prior art for at least the above reasons.

II. The Hiett reference and the Hebert reference do not render as obvious, claims 15-21, 27, and 29 of the present application because the references do not disclose, teach or suggest a single server having a first, second, and third wireless interface, where the first wireless interface provides a connection on a customer basis, for local user terminals to the server, to enable access to local content on the server, and where the second and/or third wireless interface provide access to remote content on remote servers.

As discussed at length in the March 20, 2007 Amendment and Reply, independent claims 15 and 27 both require that a server be used to both attempt to establish a connection with the remote server and permit the local customer terminal to access (i.e., download) content from the remote server. Hiett as described above, however, does not have a single device which both serves as the initial transmission mechanism (e.g., the information

request system 102/ transmission unit 206) and the device via which the terminal receives the remote content (the receiver 106). This is made clear in Figure 1 and throughout the specification of Hiatt, where the receiver 106 is discussed as being an entirely separate system than the information request system 102/transmission unit 206. (*See, e.g.*, Column 3, line 63-Column 5, line 20 and Column 5, line 40-Column 6, line 50). In other words, Hiatt does not teach a single server for performing all of the processes of independent claims 15 and 27, as Hiatt does not teach a server for both transmitting and accessing (i.e., receiving) information. In addition, because the embodiments described and shown in Hiatt consistently teach using separate devices for these processes, one cannot assert that it would have been obvious for one skilled in the art to go against these clear teachings by combining the devices.

Additionally, when it comes to the information request system sending information and the receiver receiving information in Hiatt, Hiatt specifically teaches that different interfaces and communication media be used for each process. Throughout the reference, Hiatt repeatedly discusses the use of two different communication media—with one for sending information and the other for receiving information. In fact, the Summary of the Invention in Hiatt clearly states that “[t]he receiver is coupled to the data source via any appropriate and available medium... and is suitably different from the medium coupling the information request system to the data source.” (emphasis added)³. Furthermore, given that different media are used, and different devices are used to send and receive information, it is

³ Although Hiatt does state at Column 21, lines 45-48 that the two communication media “may be the same or different media, or separate channels of the same medium,” this is clearly contradicted by the rest of the reference, which clearly teaches away from this feature. Additionally, even if the same medium were used, Hiatt nevertheless explicitly teaches the receiver having interfaces separate from the information request system. (*See, e.g.*, Column 4, lines 26-42 (for the receiver 106) and Column 6, lines 23-36 (for the transmission unit 206)).

clear that the receiver and transmission unit use different interfaces in order to send and receive information, which is clearly different from the claims as amended. For example, Figure 7 and Column 4, lines 26-42 of Hielt describe the receiver 106 as having its own interface(s), while Figure 8 and Column 6, lines 23-36 of Hielt describe the transmission unit 206 as including its own transmission mechanisms (i.e., interfaces). Therefore, regardless of which media are ultimately selected for transmitting and receiving data, the interface for transmitting information is not the same interface that is used for receiving data.

Moreover, it is clear that the choice of which media are used to effectuate the first and second communication media and the selection thereof are independent operations. That is, the choice of which communication medium is utilized for the first communication medium is made separately from the choice of which communication medium that is utilized for the second communication medium. Therefore, Appellant submits that the Examiner has failed to meet at least the third requirement for establishing a prima facie case of obviousness because Hielt does not have a single device which both serves as the initial transmission mechanism and the device via which the terminal receives remote content. Hence Appellant again submits that claims 15-21, and 27 of the present application are patentable over this prior art for at least the above reasons.

III. The Hielt reference and the Hebert reference do not render as obvious, claims 15-21, 27, and 29 of the present application because it would not have been obvious for one of ordinary skill in the art to have combined the teachings of the two cited references, and even if the two references could be combined, the resulting combination does not teach all of the required limitations recited in these claims of the present application.

At page 4 of the final Office Action of May 23, 2007, the Examiner asserted that Hielt fails to teach that “if access to a remote server is request, the server first attempts to

connect to the remote server via the third wireless interface, and if the third wireless interface cannot establish a connection with the remote server, the server attempts to connect to the remote server via the second wireless interface. However, the Examiner asserted that Hebert cures this deficiency of Hiett and evidencing his position by indicating that Hebert teaches “using alternate interface as needed for failover mechanism (See abstract, Column 2, lines 26-35, Fig. 8, Fig. 9, Column 9, lines 53-Column 11, lines 35).”

Appellant disagrees. In particular, Appellant submits that the Examiner has mischaracterized the teachings of Hebert. Hebert teaches a system and method of implementing a “backup” or “failover” mechanism to replace a primary trunked connection with a secondary, backup trunked connection. (*See, e.g.*, Abstract, Column 2, lines 9-19, and Column 4, lines 26-47 of Hebert). More specifically, Hebert teaches that if a primary connection 330A goes down, a secondary connection 330B will take over, where the secondary connection 330B will be configured with the parameters of the primary connection 330A. (*See, e.g.*, Abstract and Column 6, line 6-Column 9, line 41). In Hebert, the primary connection provides communication between, e.g., a database server 202 and an application server 204. (*See, e.g.*, Figure 3 and Column 3, line 29-Column 4, line 25). Therefore, if the primary connection in Hebert fails, the secondary connection will assume communications between the same servers, e.g., database server 202 and application server 204.

In contrast to the above, claims 15 and 27 of the present application specifically describe attempts to establish connections with a remote server via the various interfaces, where an attempt to make a connection via one interface is performed in response to a failure to establish a connection using another interface. This is not what is taught by Hebert. Instead, Hebert is directed specifically to changing connections when an existing

connection suffers from a degradation in performance. This is clearly discussed, for example in the Abstract of Hebert, which states:

Upon detecting a degradation in performance of the primary trunked connection that exceeds a threshold, the failover mechanism halts monitoring of the primary trunked connection, configures the second multi-port network interface with the parameters of the primary multi-port network interface, and brings up the second interface. (emphasis added).

This section, and others in Hebert, clearly indicate that Hebert does not teach attempting a new connection when a different connection could not be established in the first place, since the reference only teaches making a handover when an existing connection suffers from degradation. As such, Hebert cannot be interpreted as teaching any attempt to establish one connection in response to a failure to establish a connection using a different interface.

In addition to the above, Applicant also notes that Hebert is simply not related to the technology specifically relied upon by the Examiner in Hiatt. Hebert never mentions, much less teaches, the use of a communications system in a vehicle of any sort, nor does it teach, suggest, or hint at wireless communications or interfaces at all. As such, Hebert is directed to an area which completely different from Hiatt. As evidence of this fact, Applicant also notes that Hebert is listed as belonging in U.S. Classes 709 and 714, where the classes that were searched during prosecution of Shah et al. were limited to these same classes. In contrast, Hiatt is listed as belonging to U.S. Class 370, where during its prosecution, classes 370 and 455 were searched. Therefore, Applicant submits that Hebert and Hiatt are directed to entirely different subject matter and, as such, one clearly would not look to the field of Hebert to make the modification suggested by the Examiner without the improper use of hindsight.

Moreover, with regard to claim 15 of the present application, it is required that a first wireless interface is implemented for providing access to local content on a server, while a second wireless interface provides access to remote content on remote servers via a connection to an external mobile network and a third wireless interface provides access to remote content on remote servers via a connection to an external network. To this point, the Examiner is directed to Figures 1 and 2 and page 5, lines 15-24 of the present application, where it is described that the second wireless interface provides a connection to, e.g., a WCDMA network 62 whereas the third wireless interface provides a broadband connection to, e.g., an external network 67. Therefore, different external networks are connected to depending upon the wireless interface utilized in claim 15 of the present application. Hebert does not teach or even suggest such operations. As described above, Hebert teaches substituting a primary connection with a secondary connection in the same network, between the same servers, using the same parameters configured for the primary connection. Therefore, again, Hebert fails to cure the deficiencies of Hiett and again, Appellant submits that that the Examiner has failed to meet at least the first requirement of a prima facie case of obviousness.

Moreover, in addition to the reasons already discussed above, one of ordinary skill in the art would not be motivated to combine the teachings of Hiett and Hebert because Hiett is directed to selecting and utilizing different types of communication media for connections between different system elements (e.g., the information request system 102 to the remote data source 104 and the remote data source 104 to the receiver 106), whereas Hebert is directed merely to replacing a primary connection with the same type of connection

using the same parameters between the same system elements (e.g., database server 202 and application server 204).

Even if one were to combine the teachings of Hiett and Hebert, the resulting system and/or method would simply amount to implementing a redundant communication medium interface for effectuating each of the first communication medium and the second communication medium of Hebert. That is, instead of a single transmission unit 206 of the information request system 102, a second backup transmission unit would be implemented to take over the same type of communications for the transmission unit 206. Likewise, instead of single router 308 being implemented in the receiver 106, a secondary backup router would be implemented to take over the same type of communications for the router 308 if it failed. This resulting combination however, still fails to read on attempting to connect to a remote server via a second wireless interface if a connection via the third wireless interface is unsuccessful, where a second wireless interface provides a connection to an external mobile network (such as the WCDMA network 62) and the third wireless interface provides a connection to an external network (such as a broadband connection to an external network 67 described in the present application). Therefore, Appellant submits that there is no reasonable motivation to combine Hiett and Hebert, nor would the resulting combination thereof amount to the claimed embodiments of the present invention, thus failing to meet at least the first and second requirements of a prima facie case of obviousness.

It should be noted that in response to Appellant's arguments of July 23, 2007 regarding the lack of motivation for combining the Hiett and Hebert references, the Examiner maintained his rejection in the Advisory Action of July 31, 2007. In the July 31, 2007 Advisory Action, the Examiner took the position that the teachings of Hiett and Hebert could

be combined because it would have been obvious to add the functionality of alternate interfaces. Moreover, the Examiner asserted that the motivation for such a combination would be “to enhance system’s performance.” Given this simplistic interpretation of the alleged combination and the overly generic motivation, Appellant submits that the Examiner failed to understand the teachings of Hiett and Hebert. Applicant therefore reiterates its arguments presented above, as to why it would not have been obvious for one of ordinary skill in the art to combine Hiett and Hebert. Additionally and as discussed above, even if Hiett and Hebert were to be combined, the resulting combination would not read on the claimed embodiments of the present application. Hence, Appellant submits yet again, that for these reasons as well, claims 15-21, and 27 are patentable over this prior art.

IV. The Hiett reference and the Hebert reference do not render as obvious, claims 18 and 21 of the present application because the references do not disclose the updating of the local content on the server via the third wireless interface.

At pages 5 and 6 of the May 23, 2007 final Office Action, the Examiner asserted that with regard to claim 18, Hiett teaches updating local content on a server via a third wireless interface. Additionally, the Examiner asserted that as to claim 21, Hiett further teaches updating the local content (located locally on the server) via the third wireless interface capable of making a broadband connection with an external network, wherein the local and remote content are accessible by local customer terminals via the first wireless interface. In support of his position, the Examiner cited Column 3, line 4-Column 5, line 39.

Appellant disagrees. Column 3, line 4-Column 5, line 39 of Hiett merely describe the processes involved in remotely accessing information between the information request system 102, the remote data source 104, and the receiver 106, but are completely

silent as to updating content, let alone local content. As described above, at best, Hielt teaches storing remote content from the remote data source 104 at the receiver 106. (*See, e.g.,* Column 4, lines 53-57). Additionally, Hielt explicitly states at, *e.g.,* Column 4, lines 55-57, that this stored remote content “may then be provided to a user who later requests the identical data, such as a frequently requested internet home page.” (emphasis added).

In contrast, claims 18 and 21 both require the updating of local content via a third wireless interface, while claim 21 additionally required making a broadband connection with an external network, wherein the local and remote content are accessible via a first wireless interface. Nothing in Hielt even suggests that the data stored at the receiver 106 is updated, and arguably teaches away from such a feature. This is because the stored content, as described above is only sent if a user requests the identical data. In other words, even if this stored data received from the remote data source 104 of Hielt could be interpreted as being “local,” it is never updated because if it were, it would cease to be identical data. Therefore, Appellant submits that the combination of Hielt and Hebert fail to teach all of the required limitations of claims 18 and 21 of the present application.

V. The Hielt reference and the Eranko reference do not render as obvious, claims 23 and 24 of the present application nor do the Hielt reference and the Examiner’s position of Official Notice render as obvious, claims 22 and 28-34 of the present application because independent claims 15 and 27, from which claims 22-24 and 28-34 depend have been rejected by the Examiner in light of the Hielt reference and the Hebert reference.

As described above, the Examiner rejected claims 15-21, 27, and 29 under 35 U.S.C. § 103(a) as allegedly being unpatentable over the Hielt reference and the Hebert reference. Claims 23 and 24 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the Hielt reference and the Eranko reference. Claims 22 and 28-34 were rejected under

35 U.S.C. § 103(a) as being unpatentable over the Hiatt reference and the Examiner's position of Official Notice. Appellant submits that the rejection of claims 22-24 and 28-34 is improper.

Because claims 15 and 27 are independent claims of the present application, any claims dependent upon these independent claims include the same limitations in addition to those recited specifically in the dependent claim language. Furthermore, because in the Examiner's opinion, all of the required limitations of the independent claims 15 and 27 are taught by the combination of the Hiatt and Hebert references, claims 23 and 24 cannot be rejected solely in light of the Hiatt and Eranko references. Likewise, claims 22 and 28-34 cannot be rejected solely in light of the Hiatt reference and Office Notice. Therefore, Appellant submits that the Examiner has improperly rejected claims 22-24 and 28-34 of the present application.

Because none of the references cited by the Examiner, either separately or in combination with each other, teach all of the required limitations of independent claims 15 and 27, Appellant submits that each of these independent claims are patentable over this prior art. Furthermore, because dependent claims 16-24 and 28-34 are each directly or indirectly dependent upon independent claims 15 and 27, Appellant submits that each of these claims are allowable for at least the same reasons as discussed above and in addition to those reasons presented for claims 18 and 21.

VI. The rendering of a final Office Action on May 23, 2007 was improper because the Examiner failed to rebut and/or answer the substance of Appellant's arguments regarding claims 15-24 and 27-34 presented in Appellant's response of March 20, 2007.

Lastly, Appellant also takes issue with the Finality of the May 23, 2007 Office Action. In its March 20, 2007 Amendment and Reply, Appellant discussed in detail why Hiett fails to teach several features which the Examiner has asserted to be present therein, including the use of a server (not multiple devices) and the use of the same interface to both request and receive information. However, in the May 23, 2007 Office Action, the Examiner essentially repeated his prior rejections with regard to Hiett, while completely failing to address any of Applicant's arguments concerning Hiett's failure to teach the above features.

Additionally, while the Examiner had asserted that Applicant's claim amendments necessitated new grounds of rejection, Applicant submits that, in terms of the prior art, the Examiner's use of a new reference (U.S. Patent No. 6,477,152 (Hebert)) was directed entirely to a feature which had already existed in the claims before Applicant's amendments, namely the feature of switching between interfaces if one interface cannot establish a connection. Applicant made absolutely no amendments to the claims in the March 20, 2007 Amendment and Reply that related to this feature. As discussed in this prior Reply, all of Applicant's amendments were intended to clarify features which were missing from Hiett, not the other cited references. However, and as discussed above, the Examiner has ignored all of Applicant's arguments concerning Hiett and has repeated his prior rejections (as to Hiett) without comment. In fact, none of the Examiner's arguments regarding Hebert relate in any way to the text added by Applicant. Because the Examiner's new rejections do not assert that the features described in the amended text is found in Hebert, it is improper to assert that the latest prior art rejections could not have been made in a prior action. As such, any assertion that it was Applicant's amendments which necessitated the new rejections based upon the prior art is incorrect.

Moreover, section 707.07(f) of the MPEP states that “[W]here the applicant traverses any rejection, the examiner should, if he or she repeats the rejection, take note of the applicant’s argument and answer the substance of it.” (emphasis added). In this instance, although the Examiner maintained his rejection, he failed to substantially answer or rebut Applicant’s arguments or further provide evidence to support his position that Hiett does in fact teach the use of a server (not multiple devices) and the use of the same interface to both request and receive information.. Therefore, Applicant respectfully submits that the May 23, 2007 Office Action was improper with respect to claims 15-24 and 27-34 in that it was unresponsive to Applicant’s arguments and in violation of Section 707(f) of the MPEP.

CONCLUSION

For the reasons discussed above, Appellant respectfully submits that all pending claims are in condition for allowance, and respectfully request that the rejections be withdrawn or reversed, and that the claims be allowed to issue.

CLAIMS APPENDIX

1.-14. (Cancelled)

15. A server for use in a vehicle including a first wireless interface providing a connection on a customer basis, for local user terminals to the server, to enable access to local content on the server, a second wireless interface providing a connection to an external mobile network, to enable access to remote content on remote servers, and a third wireless interface for providing a broadband connection to an external network to enable access to remote content on remote servers, wherein if access to a remote server is requested by a local

user terminal, the server first attempts to connect to the remote server via the third wireless interface such that if the third wireless interface establishes a connection with the remote server, the local user terminal is permitted to access the remote content using the server via the third wireless interface, and if the third wireless interface cannot establish a connection with the remote server, the server attempts to connect to the remote server via the second wireless interface so that the local customer terminal can use the server to access the remote content via the second wireless interface.

16. A server as in claim 15, comprising detection means for determining a presence of an external network capable of making a broadband connection with the third wireless interface.

17. A server as in claim 16, comprising access control means, responsive to the detection means, for determining utilization of the second and third wireless interfaces.

18. A server as in claim 17, comprising content update means for updating the local content on the server via the third wireless interface.

19. A server as claimed in claim 15 comprising a computer programmed to operate as a world wide web server and including first and second network data adapters providing the first and second wireless interfaces, respectively.

20. A server as claimed in claim 19, wherein a third network data adapter provides the third wireless interface.

21. The method of claim 27, further comprising providing content located locally in the server and content located in the remote server and accessed by the second wireless

interface, updating the local content via the third wireless interface capable of making a broadband connection with an external network, wherein the local and remote content are accessible by local customer terminals via the first wireless interface.

22. A method as claimed in claim 21, comprising restricting access by the local customer's terminal to content on remote servers.

23. A method as claimed in claim 27, generating revenue by charging third party companies for storing content locally.

24. A method as claimed in claim 23, wherein the server provides an internet portal to the customers, wherein the method comprises charging a premium to third party companies for links to content stored locally, compared to charges, if any, for links to content stored remotely.

25.-26. (Cancelled)

27. A method of providing content using a server, which is installed in a vehicle, including a first wireless interface providing a connection to local customer terminals and a second and third wireless interfaces providing a connection to an external mobile network, comprising:

receiving a request via the first wireless interface from a local customer terminal to access a remote server;

using the server to attempt to establish a connection with the remote server via the third wireless interface;

if the third wireless interface establishes a connection with the remote server, permitting the local customer terminal to access remote content on the remote server using the server via the third wireless interface; and

if the third wireless interface is unable to establish a connection with the remote server, using the server to attempt to establish a connection with the remote server via the second wireless interface so that the local customer terminal can use the server to access the remote content via the second wireless interface.

28. The method of claim 27, wherein the third wireless interface comprises a broadband interface.

29. The method of claim 27, wherein the third wireless interface comprises a Hiperlan Wireless LAN interface.

30. The method of claim 27, wherein the first wireless interface comprises a Bluetooth interface.

31. The method of claim 27, wherein the second wireless interface comprises a WCDMA interface.

32. The server of claim 15, wherein the first wireless interface comprises a Bluetooth interface.

33. The server of claim 15, wherein the second wireless interface comprises a WCDMA interface.

34. The server of claim 15, wherein the third wireless interface comprises a Hiperlan Wireless LAN interface.

EVIDENCE APPENDIX

None.

RELATED PROCEEDINGS APPENDIX

None.

Respectfully submitted,

Date: May 23, 2008

By /G. Peter Albert, Jr./

FOLEY & LARDNER LLP
Customer Number: 30542
Telephone: (858) 847-6735
Facsimile: (858) 792-6773

G. Peter Albert Jr.
Attorney for Applicant
Registration No. 37,268